

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

GREGORY CASH AND CLARA CASH :	
AND GREGORY B. WAHOFF AND :	
PHILLIP GARCIA AND ROCKY :	
WAYNE ADKISSON, :	
Plaintiffs, :	
-vs- :	C-1-01-753
HAMILTON COUNTY DEPARTMENT :	
OF ADULT PROBATION AND :	
MICHAEL WALTON AND CITY OF :	
CINCINNATI, :	
Defendants. :	

Deposition of RODERICK ELLIS, a Witness
herein, taken by the Defendants as upon direct
examination and pursuant to the Federal Rules of
Civil Procedure as to the time and place and
stipulations hereinafter set forth, at the offices
of Hamilton County Prosecutor's Office, 230 East
Ninth Street, Cincinnati, Ohio, at 10:19 a.m. on
Wednesday, June 7, 2006, before Lisa K. Keller, a
Registered Professional Reporter and Notary Public
within and for the State of Ohio.

* * * * *

QUICK REFERENCE INDEX

WITNESS: RODERICK ELLIS

APPEARANCES: PAGE 3

	DX	CX	RDX	RCX
BY: MR. FELSON	-	4	-	-

EXHIBITS

	IDENTIFIED	PAGE
PLF'S:	-	-
PLF'S:	-	-
PLF'S:	-	-

INFORMATION REQUESTED

Not Applicable

* * * * *

1 APPEARANCES:

2 ON BEHALF OF PLAINTIFFS

3 Mr. Stephen Felson
4 Attorney at Law
5 CBLD Center
6 Suite 1650
7 36 East Seventh Street
8 Cincinnati, Ohio 45202

9 ON BEHALF OF DEFENDANTS

10 Mr. Rick Ganulin
11 Attorney at Law
12 801 Plum Street
13 Cincinnati, Ohio 45202
14 Mr. David T. Stephenson
15 Attorney at Law
16 Assistant Prosecuting Attorney
17 230 East Ninth Street
18 Suite 4000
19 Cincinnati, Ohio 45202

20 ALSO PRESENT

21 Ms. Amy Diers

22 * * * * *

1 WHEREUPON:

2 Roderick Ellis,
3 of lawful age, a witness herein, being first duly
4 sworn as hereinafter certified, testified as
5 follows:

6 CROSS EXAMINATION

7 BY MR. FELSON:

8 Q. Mr. Ellis, state your full name,
9 please.

10 A. Roderick Ellis.

11 Q. What's your current position with the
12 county?

13 A. Probation officer.

14 Q. Can you give me your complete work
15 history with the years after leaving school? Where
16 did you go to school by the way?

17 A. UC, University of Cincinnati.

18 Q. Do you have a degree there?

19 A. Yes.

20 Q. And what was your first job after
21 that --

22 A. After I --

23 Q. -- or during.

24 A. Well, when I was a student in school, I
25 was working at the county part time, Probation

1 Department part time. After I got my degree, then
2 I became a probation officer.

3 Q. When was that? What year?

4 A. 2001, somewhere in there, 2001 or 2002,
5 somewhere in there.

6 Q. Now you haven't heard, but I'll tell
7 you what we're talking about here. I'm sure you've
8 talked to your attorneys about this. We are
9 talking about the cleanup of homeless sites.

10 A. Right.

11 Q. You understand that at least on some
12 occasions in the past adult probationers in
13 Hamilton County have been used for that task,
14 correct?

15 A. Yeah, I recall that back then.

16 Q. When you say back then, when are you
17 referring to?

18 A. At the time the situation happened, I
19 believe, you know, I have a very vague memory of
20 it, but I believe it was a certain crew that was
21 probably out there picking up trash or something,
22 homeless, I don't remember exactly who the crew
23 members was that was doing that at that time.

24 Q. And this would be back, you say, before
25 you were a probation officer?

1 A. It was before.

2 Q. So what was your position before that,
3 before you became a probation officer?

4 A. I was a field supervisor. That's what
5 we did. We took crews out and supervised them.

6 Q. Is that the same position as Jeff Smith
7 who testified here before?

8 A. Right.

9 Q. So you did that sort of thing before
10 you became a probation officer?

11 A. Exactly.

12 Q. And did you go out with crews?

13 A. Yes, I took a crew out.

14 Q. You said a crew. Did that only happen
15 one day?

16 A. Well, I did it five days a week.

17 Q. And how long did you do it? How many
18 weeks or years or months?

19 A. Well, I started out part time on the
20 weekends from, I guess from 1999. I believe it was
21 from '99 until I became a probation officer, which
22 was probably 2002 maybe or something like that.

23 Q. So you have a couple of years at least
24 experience in taking crews out for cleanups?

25 A. Yes.

1 Q. And that would be adult probationers?

2 A. Right.

3 Q. And what color clothing did they wear?

4 A. They would wear vests, like safety
5 vests. There wasn't any specific color that they
6 would have to wear as far as clothes go. They can
7 wear anything they like as long as it was
8 appropriate, but they would wear like safety vests,
9 either usually red or blue.

10 Q. Now, how would you know where to take
11 these workers?

12 A. Well, what happened is the day would
13 start out where we would go to the ODOT garage and
14 they would give us a specific location that they
15 want done that day.

16 Q. And when you use the word location,
17 were these locations Ohio -- on Ohio property?

18 A. Yes, the highways.

19 Q. So as far as you know, you weren't --
20 ODOT was not giving you instructions to clean up on
21 city property?

22 A. Exactly. We do not do city --

23 Q. Go ahead finish.

24 A. As far as I know, we didn't do any city
25 properties, it's always been highway.

1 Q. Now, do you know about the contract
2 between ODOT and the county?

3 A. Yeah. I believe that there was a
4 contract.

5 Q. That was mentioned here and there.
6 That's why -- you were working for ODOT?

7 A. Yes.

8 Q. I don't mean working for them as an
9 employee. You were getting instructions from ODOT?

10 A. Right.

11 Q. Now, you would get instructions from
12 them concerning where to go?

13 A. Right.

14 Q. And would there be several sites to
15 clean up in the day?

16 A. It could be just one or it could be
17 several, it depends.

18 Q. Would these be sites adjacent to under
19 a state highway?

20 A. Yes, it would be a highway, exit ramp,
21 on and off ramps.

22 Q. Now, ever clean up under some of these
23 bridges?

24 A. I would go past them, but I don't
25 believe I ever actually cleaned up underneath them

1 or anything like that.

2 Q. Did you ever, you and your crew we're
3 talking about, ever clean up at a homeless site?

4 A. To be honest with you, I don't remember
5 if we ever cleaned up at a homeless site. We've
6 done the highways, which you know, as you go along
7 the highways, there's, you know, the underpasses
8 and, you know, but as far as probably going all the
9 way up where they usually live at, I doubt it
10 seriously. We just go on the very edge where the
11 grass is at behind the guard rails and we just keep
12 going.

13 Q. Now, when you say all the way up, are
14 we talking about possibly up towards the concrete
15 ceiling there?

16 A. Yes, up towards that way. I don't let
17 my crew go up there because of safety issues, you
18 know, them going all the way up there and with it
19 being so slanted like that, I didn't want anyone to
20 fall or anything like that. So I've never actually
21 sent them up there, you know. I've always done the
22 edges, behind the guard rail, grass area where
23 trash is.

24 Q. Did you ever see a site where you could
25 look up on the slant there and tell that people

1 were living there?

2 A. I've seen sites like that, but I've
3 also seen sites that's trashed, but sometimes you
4 can't tell if someone is living there or not. You
5 see a lot of broken bottles, you see clothes, all
6 kinds of things. I don't necessarily know if
7 someone is living up there or not.

8 Q. But your testimony is that in the two
9 to three years that you took crews out, crews of
10 adult probationers, you never actually had the crew
11 clean up a site which you knew was a homeless site?

12 A. To be honest, I don't even -- I don't
13 really know, to be honest.

14 Q. You don't remember ever doing it?

15 A. No, I don't ever remember really, I
16 guess, having someone clean up a homeless site if I
17 know it's a homeless site. I mean --

18 Q. Finish your sentence. If you know it's
19 a homeless site, you wouldn't do it? Is that what
20 you're saying?

21 A. If I know it's a homeless site, for
22 example, if I would see people up there, then I
23 wouldn't have anyone go up there. Again, because
24 of safety issues.

25 Q. And you wouldn't go up?

1 A. No, I wouldn't go up there.

2 Q. So you've never told people who were
3 living under a bridge or under an overpass or
4 something, "We're coming here to clean up, take
5 your personal stuff and clear out"?

6 A. No, no.

7 Q. Did you ever see anybody do that?

8 A. No, I've never seen anyone -- like I
9 said, people that's living, I don't usually
10 communicate with them or tell them, you know, move
11 on or this and that. I'm not in the position to do
12 that.

13 Q. You say usually, but I don't know
14 whether that means ever.

15 A. I should say never.

16 Q. That's what we need to know.

17 A. Never.

18 Q. Usually means possibly sometimes you
19 did.

20 A. Never.

21 Q. You don't recall any instance where you
22 spoke to somebody who appeared to be living on an
23 ODOT or a state site and said, "We're going to
24 clean up, please take your stuff," or something
25 like that?

1 A. No, I never did that.

2 Q. And do you recall an instance where you
3 were cleaning up and there were no people around
4 but it looked like somebody might be living there,
5 mattresses, a tent?

6 A. I've seen that, yeah.

7 Q. Did you go and clean that site?

8 A. No.

9 Q. Did you have instructions not to do
10 that or was that your personal choice?

11 A. There was no instruction to do it or
12 not to do it. It was just that I never done it.

13 Q. Let me clarify a little. You never saw
14 any written instructions one way or the other,
15 correct?

16 A. Right.

17 Q. And who was your immediate supervisor
18 back in those years?

19 A. When you say immediate supervisor, do
20 you mean the Probation Department? Because we have
21 a supervisor and then when we go to ODOT, they are
22 not necessarily supervisors, but they tell us where
23 to go and what to do.

24 Q. Let's start with the Probation
25 Department.

1 A. I want to say Dave Browning was the
2 supervisor at the time, I believe. I'm not sure if
3 it was him.

4 Q. And you don't recall him telling you
5 anything about homeless sites or homeless people?

6 A. No.

7 Q. Anybody at ODOT mention anything about
8 homeless sites or homeless people?

9 A. No.

10 Q. Did ODOT people ever tell you anything
11 more than where to clean up?

12 A. No. They just -- when we go, like I
13 said, the morning we go to the garage, then we have
14 certain people that we work with from ODOT. Okay?
15 And they'll say that we're going here and there,
16 we're doing such and such a ramp or such and such a
17 highway.

18 Q. Okay. So, their instructions were
19 limited to where and not how?

20 A. Right. They just tell us where to go.

21 Q. During the course of cleanups, would
22 you be -- you had a vehicle with you?

23 A. Yes. We have a -- I drove a van.

24 Q. You drove a van. That would be for the
25 probationers?

1 A. Right.

2 Q. And you?

3 A. Exactly.

4 Q. Anybody else? Just you and the
5 probationers?

6 A. Right. It's just me and the
7 probationers in the van.

8 Q. And what about -- let me go back a
9 step. Were there bags used?

10 A. Bags as far as --

11 Q. For putting trash in?

12 A. Yeah, we have bags.

13 Q. You carry those with you?

14 A. We have the bags in the van.

15 Q. And I take it the probationers would
16 fill up these bags?

17 A. Yes.

18 Q. And then who would take the bags?

19 A. The ODOT crew would come behind us and
20 pick the bags up later because they know, you know,
21 where we're at, and so they'll come behind us and
22 pick the trash bags up.

23 Q. While the probationers were picking
24 this stuff up and putting it in bags, where would
25 you be?

1 A. I would be in the van. For example, we
2 have safety lights on the back of the van because,
3 you know, we're like on the side of the highway.
4 The crew would be in front of the van, and I would
5 go along in the van, you know, following them. You
6 know, I would like use the van to sort of protect
7 them.

8 They're here and the van is here
9 (indicating) and they'll go along and pick up the
10 trash and I'm just following them in the van.

11 Q. I see. Did any probationer in those
12 years, anybody ever come to you and say, "Look, I
13 found something that might be of value, what should
14 I do with it?" Just what you remember.

15 A. To be honest with you, no, I don't
16 remember that.

17 Q. You don't recall that sentence ever
18 being spoken?

19 A. No.

20 Q. Or seeing somebody holding up a gold
21 locket and saying, "What should I do with this?"

22 A. No.

23 Q. Did you ever talk to the probationers
24 about this possibility?

25 A. Possibility of?

1 Q. That they might find something that
2 wasn't trash.

3 A. No, I don't, no, no. I don't usually
4 say If they find something that's not trash to come
5 bring it to me.

6 Q. And as far as you know, nothing was
7 ever -- that event never occurred anyway?

8 A. No.

9 Q. They never asked you?

10 A. No.

11 Q. You never saw, in the place where you
12 were going to clean, you never saw, let's say, a
13 sleeping bag that looked like maybe it belonged to
14 somebody?

15 A. You know, like I said, I've seen
16 mattresses that's up underneath the underpass.
17 I've seen clothes. I've seen broken bottles. I've
18 seen --

19 Q. Up under --

20 MR. GANULIN: Objection. He needs
21 to finish his answer. You've been cutting him off.

22 THE WITNESS: I've seen
23 mattresses, broken bottles, clothes, things like
24 that, shoes, you know, but those could be --
25 someone could be living there, someone could be,

1 you know.

2 BY MR. FELSON:

3 Q. Your testimony is you didn't send your
4 people up there?

5 A. No. I don't send my people up there
6 because of the safety issue with it being all the
7 way up, slanted. I didn't want anybody to climb up
8 there and slip and fall and hurt themselves, so I
9 never sent anyone up there.

10 Q. Now, did you ever talk to other
11 supervisors about how they cleaned up for ODOT?

12 A. No.

13 Q. Did the other supervisors clean up --
14 also clean up for ODOT only or did they do some
15 city clean up?

16 A. We're assigned certain locations each
17 day. My job primarily was with ODOT, and you have
18 other supervisors that may work with the city, does
19 trash pick up with the city. My job primarily was
20 with the highway.

21 Q. Did the Cincinnati police officers ever
22 come around to these sites, say, because there was
23 possibly some danger or for any reason you know?

24 A. Come to me?

25 Q. Also show up at the sites to help you

1 out in any way?

2 A. The sites that I've been at, no. I've
3 never dealt with a police officer that came to me
4 that said this or that, no.

5 MR. FELSON: Okay. That's all I
6 have.

7 MR. GANULIN: No questions.

8 MR. STEVENSON: Rod, you're done.
9 (Concluded at 10:35 a.m.)

10 MR. GANULIN: I want to discuss
11 this on the record. About the remaining --

12 MR. FELSON: I have a note to
13 myself here, I have a note to myself here to talk
14 to Bob Newman and to see what our position is on
15 the third guy, on Rocky. I've never laid eyes on
16 him. Bob has. Where he is, I don't know.

17 MR. GANULIN: Because we have an
18 outstanding request to depose him, and if we can't,
19 then we'll dismiss him.

20 MR. FELSON: Whatever you need to
21 do obviously you're going to do. I will get you an
22 answer on that the best I can soon.

23 MR. STEVENSON: Steve, we talked a
24 little bit earlier about Bob Newman's deposition
25 and you and I had a conversation about it. Perhaps

1 we could do that by some way of stipulation, that
2 he went to the property room and looked at the
3 logs. He didn't look at any property and didn't
4 take anybody with him.

5 MR. FELSON: This morning before I
6 left, I put a note on the secretary's desk that
7 said pull Bob's affidavit and whatever documents,
8 if there were any, and everything there is put on
9 my desk. I will look at that so I make sure. We
10 were just doing it by memory Bob and I yesterday.
11 I do believe you're correct, and Bob said so, too,
12 that he thinks he was alone and so on and he was
13 looking for some way he doesn't have to get up and
14 testify.

15 MR. STEVENSON: That's fine.

16 MR. FELSON: We've got to look at
17 it, but the results of what he went and looked at
18 were not ambiguous, as I recall. He looked, he
19 says he looked for this, that, and the other and
20 didn't find it. I haven't looked at the affidavit
21 in a year or two.

22 MR. STEVENSON: All right.

23 Thanks.
24

25 _____
RODERICK ELLIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF OHIO

SS:

COUNTY OF MONTGOMERY

I, LISA K. KELLER, the undersigned, a Registered Reporter, Certified and Notary Public within and for the State of Ohio, do hereby certify that before the giving of aforesaid deposition said RODERICK ELLIS, was by me first duly sworn to state the truth, the whole truth, and nothing but the truth; that the foregoing is the deposition given at said time and place by said RODERICK ELLIS; that said deposition was taken in stenotypy by the court reporter and transcribed into typewriting under her supervision; that said transcribed deposition was submitted to the witness for his examination; the court reporter was neither a relative of nor attorney for any of the parties to this case nor relative of nor employee for any of the counsel; neither the court reporter nor the affiliated court reporting firm has a financial interest under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office this 16th day of June, 2006.

LISA K. KELLER
Notary Public, State of Ohio
My Commission Expires 11-7-08

1 PLEASE USE THIS ERRATA SHEET TO MAKE ANY
2 AND ALL CORRECTIONS, BY LISTING THE PAGE NUMBER,
3 LINE NUMBER AND THEN A BRIEF DESCRIPTION OF THE
4 ERROR. PLEASE DO NOT MAKE ANY MARKS OR CORRECTIONS
5 ON THE TRANSCRIPT. IF NEEDED USE THE BACK OF THIS
6 SHEET. UPON COMPLETION PLEASE SIGN AND DATE THIS
7 SHEET AT THE BOTTOM. THANK YOU.

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____

24 _____

25 SIGNATURE: _____ DATE: _____